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MYERS BIGEL SIBLEY & SAJOVEC  
PO BOX 37428  
RALEIGH NC 27627

In re Application of

ORGEN, Per

Application No.: 10/519,130

PCT No.: PCT/EP03/05842

Int. Filing Date: 04 June 2003

Priority Date: 06 June 2002

Docket No.: 9342-6

For: GRAPHICAL INTERFACE FOR  
EXPANDABLE MENUS

DECISION

ON PETITION UNDER

37 CFR 1.181

This decision is in response to applicant's petition to revive an unavoidably abandoned application, filed in the United States Patent and Trademark Office on 18 September 2007. It has been treated as a petition to withdraw a holding of abandonment under 37 CFR 1.181. The petition fee of \$500 will be credited to deposit account no. 50-0220, as authorized.

**BACKGROUND**

On 18 September 2006, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing search fee, examination fee or oath or declaration were required.

On 24 August 2007, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements.

On 18 September 2007, applicants filed the instant petition.

**DISCUSSION**

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1) and (2) have been satisfied. Practitioner states that the Notification of Missing Requirement was not received and indicates that a search of the file did not locate the notification. The docket clerk states that a search of the docket records indicates that the Notification of Missing Requirements was not received.

Item (3) has not been satisfied. Practitioner must provide a copy of the docket records for the firm, where the nonrecieved Office communication would have been entered had it been received and

docketed and reference the docket record in the practitioner's statement. "For example, if a three month period for reply was set in the nonreceived Office Action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action." MPEP §711.03(c) para. II. The docket records for this application alone are not sufficient.

Further, as indicated in the Decision On Petition Under 37 CFR 1.137(b) mailed 18 September 2006, the declaration supplied during the international phase contained non-initialed, non-dated alterations. "Any changes made in ink in the application or oath prior to signing should be initialed and dated by the applicants prior to execution of the oath or declaration. The Office will not consider whether noninitialed and/or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration." MPEP 605.04(a). Such changes cast doubt on the content of the declaration executed by the inventor. Under PCT Rule 51bis.2, the Office is authorized to ask for a new oath or declaration.

### CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper reply, including an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) and the surcharge fee, is required within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed, should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Erin P. Thomson/

Erin P. Thomson  
Attorney Advisor  
PCT Legal Administration

Telephone: 571-272-3292  
Facsimile: 571-273-0459